

REMARKS

The following remarks are responsive to the June 11, 2009, Final Office Action.

At the time of the Office Action, claims 1 and 3–12 were pending. The status of the claims is as follows:

- Claims 1 and 3–12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite;
- Claims 1, 4, and 6–12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ouzounidis (U.S. Patent No. 7,130,918);
- Claim 3 stands rejected under U.S.C. § 103(a) as being obvious over Ouzounidis in view of Ganor (U.S. Patent Publication No. 2004/0219908); and
- Claim 5 stands rejected under U.S.C. § 103(a) as being obvious over Ouounidis in view of O’Neil (U.S. Patent No. 7,127,232).

35 U.S.C. § 112, Second Paragraph, Indefiniteness of Claims 1 and 3–12

1. Applicants have amended independent claims 1 and 10 to correct the antecedent basis issue related to the message.

In the Office Action, on p. 2, the Examiner rejected claims 1 and 3–12 as being indefinite because the phrase “the message” in independent claims 1 and 10 lacked antecedent basis for “the message”.

Applicants thank the Examiner for noting this deficiency. Accordingly, Applicants have amended claims 1 and 10 to correctly introduce “message” with the correct article “a”.

The amendment having fully addressed the Examiner’s basis for rejection, Applicants respectfully request that the 35 U.S.C. § 112 rejection be withdrawn from the application.

35 U.S.C. § 102(e) Anticipation of Claims 1, 4 and 6–12 by Ouzounidis

2. Applicants have amended independent claims 1 and 10 to include the limitation that the first step is activated during an activation of the second step by positioning said time delay that is a function of the present or not present state determined in the second step. Ouzounidis fails to teach or suggest this limitation.

In the Office Action, on pp. 3–4, the Examiner rejected claim 1 as being anticipated

by Ouzounidis, noting how each of the claim elements was being read on by the disclosure of Ouzounidis.

In response, Applicants have amended independent claim 1 in order to specify that *the first step is activated during an activation of the second step by positioning the time delay (T_3 , T_i) as a function of the present or not present state determined in the second step.*

The addition of this limitation requires that, upon expiration of a time delay without a reaction from the network, the mobile subscriber is set to a “not present” state.

Advantageously, the value of the time delay is determined as a function of the presence state (“present” or “not present”). In these conditions, this state of presence (which can be “present” or “not present”) is taken into account to determine the value of this time delay. This characteristic allows controlling and limiting message traffic in the network (see page 17, line 29 – page 18, line 18).

Moreover, this characteristic is relevant in the context of the present invention, in which a mobile device in a “present” state is expected to provide an acknowledgement quickly (see page 18, lines 5–10).

Ouzounidis (nor Ganor or any other cited reference) discloses a time delay defined as a function of the presence state determined for the considered subscriber.

Although the Examiner might suggest that Ouzounidis discloses such a characteristic at col. 7, lines 5–30, Applicants respectfully assert that this is not the case. In this section, Ouzounidis discloses that a specified time limit is used to decide that a user is not available when the sent message is not acknowledged in the specified time limit. Ouzounidis further discloses here that it is possible to determine a non presence of a user either by emitting a specific message (a test message) or by transferring a message sent by another user towards the user. However, this section does not teach or suggest defining a value for this specified time limit as a function of the presence state (“present” or “not present”).

For these reasons, and based on the amendment to independent claim 1, lacking a teaching of this element, Ouzounidis cannot anticipate claim 1. Independent claim 10 has been amended to include similar limitations, and therefore this reasoning applies to claim 10 as well as the remaining dependent claims of the application.

Applicants therefore respectfully request that the 35 U.S.C. § 102 rejection be withdrawn from the application.

In re Appln. of Anza Hormigo et al.
Application No. 10/564,949
RCE and Response to Final Office Action of June 11, 2009

35 U.S.C. § 103(a) Obviousness of Claims 3 and 5 over Ouzounidis and Ganor and O'Neil, Respectively

3. Applicants rely upon the above arguments with respect to dependent claims 3 and 5, and asserts that the addition of Qu does not supplant the deficiencies identified above with respect to the Zabawshyj and Caspi.

In the Office Action, on pp. 6–8, the Examiner combined Ouzounidis with Ganor and O'Neil in establishing an obviating combination of references for claims 3 and 5 respectively. Without addressing the specifics of the additional reference on the merits, Applicants rely upon the above arguments and asserts that the disclosure of Ganor and O'Neil, alone or in combination, does not serve to solve the deficiencies of the teachings of Ouzounidis. The Examiner has cited this reference for purposes related to the specifics of claims 3 and 5 respectively.

For these reasons, the Applicants assert that the amended claim language clearly distinguishes over the prior art, and respectfully requests that the Examiner withdraw the 35 U.S.C. § 103 rejection from the present application.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/mark bergner/

Brian C. Rupp, Reg. No. 35,665
Mark Bergner, Reg. No. 45,877
DRINKER BIDDLE & REATH LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000 (telephone)
(312) 569-3000 (facsimile)
Customer No.: 08968

Date: September 11, 2009
CH01/ 25394079.1